

COMMITTEE OF BAR EXAMINERS OPEN SESSION AGENDA ITEM

AGENDA ITEM: JUNE 2017 – O-302

DATE: June 23, 2017

TO: Subcommittee on Operations and Management

FROM: Andrew Conover, Principal Analyst
Office of Research and Institutional Accountability

SUBJECT: Proposed Adjustments to Law School Fees

EXECUTIVE SUMMARY

During the most recent annual budget preparation cycle, State Bar staff reviewed various fee-based programs administered by the offices of Admissions and Member Records and Compliance. Program fees were examined to determine whether they were appropriately set for the upcoming fiscal year. A preliminary report regarding Admissions-related fees was presented to the Committee of Bar Examiners (Committee) at its January 2017 meeting, at which time staff was asked to conduct additional research and then return with a set of recommendations.

This report provides the additional information requested by the Committee and a set of recommendations regarding law school regulation fees.

At current fee levels, staff estimates a shortfall of \$279,000 between revenues and expenses for the Law School Regulation program. Rather than attempt to close the gap completely – which would result in fees that would be unmanageable for some of the smallest schools – staff recommends raising the inspection fees 20 percent and the annual reporting fees 25 percent for all schools. In addition, changes are proposed to the fee cycle, specifically to transition to an annual installment schedule, as opposed to the current process which involves a sizeable fee paid once every five years.

BACKGROUND

The Committee currently regulates 39 schools – 17 that it accredits, referred to as CALS, and 22 that it registers to offer legal education in California.¹ The current law school regulation fees established by the Committee vary by type (accredited or unaccredited) and student enrollment, but can largely be lumped into two main recurring categories: compliance and inspection.

¹ The American Bar Association has approved 21 other programs that are deemed accredited law schools for California students seeking admission to practice law in California.

Compliance fees are paid annually in November, whereas the periodic inspection fees are paid every five years, based on the inspection schedule.² As reported to the Committee in January, there is a distinction between the unaccredited schools and the CALS in terms of the payment structure for inspection fees: unaccredited schools are charged a flat rate based on their student enrollment size, while the CALS are billed a fee at an hourly rate based on the total staff resources expended during the inspection and subsequent report drafting. Both the CALS and the unaccredited law schools pay for travel-related and meal expenses incurred during an inspection.

Law School fees in all categories were increased by 10 percent in 2015, and another 5 percent in 2016.

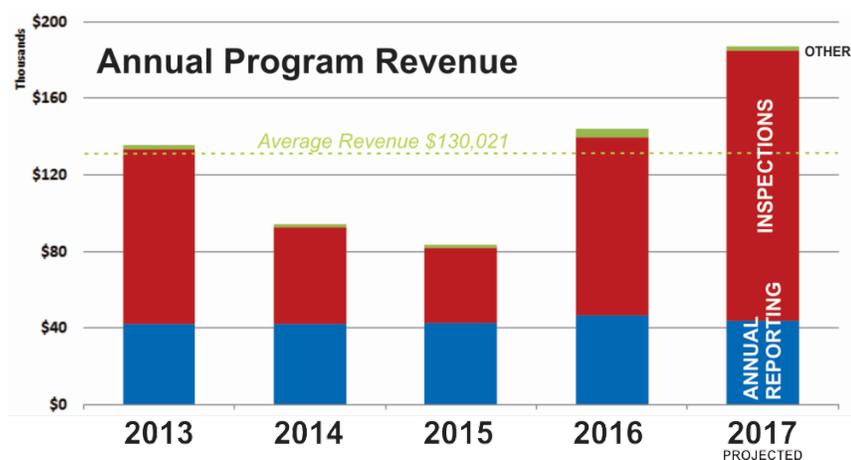
DISCUSSION

The current law school regulation process involves the following primary components:

- Processing of applications for the registration of new law schools or the accreditation of unaccredited law schools
- Annual compliance reporting of accredited and unaccredited law schools
- Inspecting schools every five years to confirm the operational compliance of accredited and unaccredited law schools
- Enforcing compliance through issuance of Notices of Noncompliance, subsequent inspections and, if needed, Committee hearing and action
- Reviewing and recommending Committee action regarding requests for variances, waivers of requirements and major changes by accredited and unaccredited law schools
- Drafting recommended changes to Committee's accreditation or registration standards;
- Assisting the Committee in the adoption of all such changes

Structural Deficit

Revenue received from the law school regulation program over the last five years averages \$130,021 per year. The table below summarizes the year-to-year fluctuations. Changes in revenue from year to year are driven largely by differences in inspection schedules.



² The Inspections referenced in this analysis are limited to the periodic inspections, generally recurring every five years. Other types of inspections, such as interim inspections for new CALS campuses and for schools which have been issued a Notice of Noncompliance generate separate revenue.

The current cost to operate this program is \$409,077 per year, reflecting an annual structural deficit of \$279,056. (Detailed cost information is provided as Attachment A.)

Comparative Accreditation Processes

In addition to analyzing program revenue and costs, staff reviewed the processes and fees assessed by other accrediting bodies, specifically the American Bar Association's (ABA) and the Western Association of Schools and Colleges Senior Colleges and University Commission (WASC). This study focused on the ongoing annual or cyclical fees assessed once the initial school application process has been completed.

With respect to the ABA, which assesses a flat annual fee to all schools it approves, staff converted the existing fee structure to a comparable annual rate. This fee was then compared to the ABA fees for comparably sized schools.³ The results of that analysis reflect the following:

- State Bar Average Annualized Law School Regulation Cost: \$1,735-\$6,319
- ABA Annual Law School Regulation Cost: \$17,818⁴

The WASC Senior Colleges and University Commission typically inspect much larger educational institutions than does the State Bar, such as public and private universities, and have much longer accreditation periods (up to 10 years). WASC fees are also annual; State Bar annualized figures are compared to WASC fees below:

- State Bar Average Annualized Law School Regulation Cost: \$1,735-\$6,319
- WASC Annual School Regulation Cost: \$8,340-\$11,575

Detailed information reflecting current State Bar Law School Regulation fees and corresponding projected ABA and WASC fees by school is provided in Attachment B.

The above analysis demonstrates that State Bar fees are substantially lower than those of other accrediting bodies. Increasing California State Bar Law School Regulations costs from the annualized minimum of \$1,735 to the ABA cost would represent over a 600% increase in costs. Even taking the maximum annualized California State Bar cost and increasing it to the ABA level would represent a 65% increase.

To avoid imposing an unmanageable cost on the smallest law schools, staff recommend a fee increases of 20 percent (inspection) and 25 percent (annual reporting) designed to help reduce but not eliminate⁵ the funding shortfall, are recommended at this time. The proposed new fee schedules are provided as Attachment C.

In addition to increasing accreditation fees, staff recommends modifying the inspection fee payment structure such that both the periodic inspection and annual reporting fees are paid on a flat annual installment basis for all schools. Including a portion of the cost of site visits along with schools' annual reporting fees could be beneficial to both the schools and the State Bar for

³ Virtually all ABA law schools operate from a single campus, unlike some CALS who operate branch or satellite campuses which require significantly more effort for periodic inspections.

⁴ Amount shown is for the smallest ABA enrollment category.

⁵ At current program costs, fee increases averaging 315% for all would be required to completely eliminate this gap.

planning and budgeting purposes. Planning for known set fees would eliminate the peaks and valleys of payments for the schools, as they would be paying a portion of the site inspection fees each year in advance, regardless of when their inspection is scheduled.

The proposed CALS inspection fee of \$22,200 was derived from a review of the fees charged over the last five-year CALS inspection cycle (historic CALS average of \$18,500 plus a 20 percent increase). Under the staff recommendation, all fee adjustments would become effective January 1, 2018. The increased Annual Compliance Report fees and 1/5 of the next periodic inspection would be reflected in the November 2018 billing.

True-Up Option

Pure adoption of the annual inspection flat-fee payment model would result in all CALS paying a set inspection fee (recommended to be \$22,200, plus an additional campus fee as appropriate) prorated equally over a 5-year inspection cycle. An alternate approach involves a “true-up” where the amount paid each year is the same pre-payment of the *set* inspection fee; but the final cost would be determined by the *actual* number of hours expended during the visit and report-writing process (using a proposed hourly rate of \$275 per hour).

Under the true-up approach, each of the CALS, each would be billed the sum total for the inspection (including travel and meal expenses incurred by the inspection team) once the report of the inspection has been finalized and received by the Committee. The bill would reflect a credit for all annual installment fees that had been paid at the time of invoicing.

The flat-fee payment model is the *simplest* to administer for both the schools and the State Bar. It also protects both from fluctuations in costs or resources needed to conduct the Law School Regulation function. However, there is the potential that the adopted fee is too low as compared to the investment needed to regulate some CALS, and too high as compared to the investment needed for others. This risk has the potential to negatively impact both the State Bar and the CALS. If adopted, staff recommends, under either scenario, actual regulation costs would be assessed every five years to determine if any adjustments were needed to the inspection fee.

FISCAL/PERSONNEL IMPACT

Based on both the increased rates recommended and the partial pre-payment of future-years' inspections, a revenue increase of \$92,170 to the Admissions Fund could be realized in FY2018.

The impact on the CALS and unaccredited schools is difficult to gauge. While the proposed fees for the majority of schools represent less than two percent of the average posted tuition per student, a few of the very small schools might not be able to sustain any increases, based on their current enrollment base. With this concern in mind, staff recommends circulating the proposed fee schedule for comment.

RECOMMENDATION

It is recommended that the Committee directs staff to send the proposed amendments to the Schedule of Law School Fees out for comment; comments received will be submitted to the Committee with final fee adjustments and schedule recommendations, presented to the Board of Trustees at its September meeting.

ATTACHMENT(S) LIST

- A. Internal Costing Summary
- B. Law School Regulation Fee Comparisons
- C. Law School Fee Schedule (redline)